IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Writ Petition No.11925 of 2001

The Tuticorin Sailing Vessel
Owners Association,
rep. by its Secretary, L.P.Dasan,
77, Thattar Street,
Tuticorin-628 001. .. Petitioner

Vs.

1. The Union of India, rep. by Secretary,
Ministry of Shipping Ports Wing,
No.1, Transport Bhavan,
Parliament Street,
New Delhi-110 001.

2. The Chairman,
Tuticorin Port Trust,
Tuticorin. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records in GSR.260(E) dated 17.04.2001 published in the Gazette of India Extra-ordinary as well as the Notification in GSR.389(E) dated 25.05.2001 on the file of the first respondent and quash the same and direct the first respondent to appoint one of the elected nominee of the Petitioner Association representing the interest of Owners of Sailing Vessels, as a Trustee of the Board of Trustees in accordance with Section 3 of the Major Port Trust Act 1963.

For petitioner : Mr.Antony Jesus
For respondents : No appearance for R1
Ms.O.Asha for R2

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O R D E R

This writ petition is filed to call for the records in GSR.260(E) dated 17.04.2001 published in the Gazette of India-Extraordinary, as well as the Notification in GSR.389(E) dated 25.05.2001 on the file of the first respondent and quash the same and direct the first respondent to appoint one of the elected nominee of the Petitioner Association

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representing the interest of Owners of Sailing Vessels, as a Trustee of the Board of Trustees in accordance with Section 3 of the Major Port Trust Act 1963.

2. The petitioner is a registered society under the Tamil Nadu Society Registration Act bearing Registration Number as S.2 of 1970. The petitioner-Association was founded by the Owners of Sailing Vessels of Tuticorin Port Trust for the benefit of owners of the vessels and also for coordinating with the management of the Tuticorin Port Trust for the efficient working. There are about 40 mechanised sailing vessels all plying between Tuticorin Colombo-Maldives and Lakshadweep and west coast of India, and 12 lighterage boats. Besides, there are about 1000 Boatmen involved in the trade and various categories of workers are depending on this trade by way of transporting, loading, unloading etc. The Association also extends their cooperation with the Management of the Port Trust for efficient functioning. The rights of the members of the Association is also recognised by the Government as well as the Management of the Port Trust. Originally, Tuticorin Port Trust was known as "Tuticorin Harbour Project". Subsequently, in the year 1963, the Government of India recognised and sanctioned for the construction of all weather Major Port of Tuticorin under the direct control of Ministry of Shipping and Transport. Thereafter the Tuticorin Harbour Project was declared as a Major Port Trust in and by virtue of the provisions of Indian Ports Act, 1908 and continued to be under the control of Central Government. Subsequently, the Harbour Project was declared as Tuticorin Port Trust under the provisions of the Major Port Trust Act, 1963 and the same is effective from 01.04.1979. Consequently, the management and administration came to be vested with the Board of Trustees constituted by virtue of Section 3 of the Major Port Trust Act, 1963. Section 3 of the Major Port Trust Act, 1963 provides for the constitution of Board of Trustees. The Board shall consist of the Trustees, viz. a Chairman to be appointed by Central Government and one Deputy Chairman as the Central Government may deem fit to appoint. Besides, there are not more than 17 persons who are in the opinion of the Government capable of representing the various interests such as labourers employed in the Port, Mercantile Marine Department, Customs Department, Government of State in which the Port Trust is situated, Defence Service, Indian Railways and also such number of persons to be elected by such bodies and representing any one or more of such of the interest specified in the notification, viz. ship owners, Owners of Sailing Vessels, shippers and such other interest in the opinion of Government to be the representatives of the Board. As the Tuticorin Port became a major Port from 01.04.1979, a Board of Trustees was constituted in accordance with Section 3 of the Major Port Trust Act, 1963 and the petitioner-Association elects one of its members and the elected member represents the petitioner-Association as a Trustee. Ever since 1979, this practice was going on and as such, the petitioner-Association is entitled to nominate its representative for being appointed as the Trustee of Tuticorin Port Trust under Section 3 of the Major Port Trust Act, 1963. The term of the Board of Trustees constituted in the

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year 1999 ended on 31.03.2001 and thereafter, due to some reasons, the petitioner-Association's nominee was not appointed as a Trustee. The first respondent, in his Notification in GSR 260(E) dated 17.04.2001, appointed five persons representing Government Functionaries by virtue of the powers conferred under Section 3 of the Major Port Trust Act, 1963. Subsequently, by another Notification in GSR.389(E) dated 25.05.2001, the first respondent appointed six more Trustees, totalling to eleven Trustees to the Tuticorin Port Trust. As the petitioner-Association's nominee has not been appointed as a Trustee, the present writ petition is filed.

3. Learned counsel appearing for the petitioner contended that by virtue of Section 3 of the Major Port Trust Act, 1963, the petitioner-Association should be represented in the constitution of the Board of Trustees and it is not open to the first respondent to deny the same. It is also submitted that, earlier the petitioner-Association was recognised and their nominee was also appointed as Trustee in the Board of Trustees. Hence the petitioner's representative ought to have been appointed by the first respondent. It is also submitted that the failure on the part of the first respondent in not nominating the petitioner-Association's representative is contrary to the provision of Section 3 of the Major Port Trust Act, 1963 and as such, it is an error on the face of the record. It is also further submitted that the Government issued a Notification in the year 1989, wherein the Government of India had taken into consideration the facts that the Owners of Sailing Vessels should be represented by a representative in the interests of the both the management of the Tuticorin Port Trust as well as the petitioner-Association. It is therefore, submitted that it is absolutely necessary that the petitioner-Association's nominee shall be appointed as a Trustee of Board of Trustees in accordance with Section 3 of the Major Port Trust Act, 1963. Therefore, it is submitted that, not appointing the petitioner-Association's nominee as one of the Trustee by the first respondent is wrong, illegal, without basis and justification. Hence the impugned notifications have to be quashed.

4. Learned counsel appearing for the second respondent filed a counter affidavit and submitted that it is not a matter of right that the petitioner-Association's nominee should be appointed as a Trustee in the Board of Trustees. It is also submitted that there is no statutory recognition or statutory right conferred, that the petitioner has to be appointed. It is also submitted that appointing the petitioner-Association's nominee as a Trustee is under the discretion of the respondents and hence not appointing the petitioner-Association's nominee as one of the Trustee would not amount to any violation of law. Hence the orders passed by the first respondent are in accordance with law.

5. Heard the counsel. It is seen that the Central Government has issued a Notification in G.S.R.213(E) dated 27.03.2001, which reads as follows:-

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"G.S.R.213(E).-In pursuance of the provisions of sub-clause (ii) of clause (c) of sub-section (1) of Section 3 of the Major Port Trusts Act, 1963 (38 of 1963) and in supersession of the notification of the Government of India in the erstwhile Ministry of Surface Transport (Ports Wing) No.G.S.R.No.379(E) dated 20th May 1999, the Central Government hereby specifies the number of persons mentioned in column (4) of the Table below to be elected by each of the bodies to represent each of the interests shown respectively in the corresponding entries in column (2) and (3) of the said Table on the Board of Trustees of the Port of Tuticorin.

2. Provided that in the case of the body mentioned against the serial number 6 of the said Table being owned or controlled by the Government, the person to be elected by the said body shall be appointed by the Central Government.

TABLE

Sl. No.	Name of bodies	Interests	Number of persons to be elected Trustees
(1)	(2)	(3)	(4)
1.	Indian National Shipowners Association (INSA)	Shipowners	1
2.	Indian Chamber of Commerce and Industry	Shippers	1
3.	Southern Petrochemical Industries Corporation Limited (SPICL)	Shippers	1
4.	Tuticorin Stevedores Association	Other Interest	1
5.	TIDCO	Other Interest	1
6.	Indian Oil Corporation	Other Interest	1
		Total	6

In pursuance of the sub-section (4) of Section 3 of the aforesaid Act, the Central Government hereby specifies the period ending 26-4-2001 as the period within which the election of Trustees shall be held."

From the last paragraph of the above Notification, it is clear that the period of the Board of Trustees comes to an end on 26.04.2001. The prayer in the writ petition is to quash the impugned notifications of the first

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respondent and also the petitioner-Association's nominee should be appointed as one of the Trustee. As the period itself has come to an end, the argument that the petitioner's nominee has to be appointed is unsustainable and therefore, the writ petition has become infructuous. Section 3 of the Major Port Trusts Act, 1963 is the relevant provision which deals with nomination of the Trustees to the Board of Trustees, and the same reads as follows:-

"3.Constitution of Board of Trustees-(1) With effect from such date as may be specified by notification in the Official Gazette, the Central Government shall cause to be constituted in respect of any major port a Board of Trustees to be called the Board of Trustees of that port, which shall consist of the following Trustees, namely:-

(a) a Chairman to be appointed by the Central Government;

(b) one Deputy Chairman or more, as the Central Government may deem fit to appoint;

(c) not more than nineteen persons in the case of each of the ports of Bombay, Calcutta and Madras and not more than seventeen persons in the case of any other port who shall consist of-

(i) ...

(ii) such number of persons, as the Central Government may, from time to time, by notification in the Official Gazette, specify, to be elected by such bodies and representing any one or more of such of the following interests as may be specified in the notification from among themselves, namely:-

(1) ship owners;

(2) owners of sailing vessels;

(3) shippers; and

(4) such other interests as, in the opinion of the Central Government, ought to be represented on the Board.

Provided that in a case where any such body is an undertaking owned or controlled by the Government, the person to be elected by such body shall be appointed by the Central Government.

(2) A Trustee appointed by the Central Government under this Act may be appointed by name or by virtue of office.

(3) Every notification issued under sub-clause (ii) of clause (c) of sub-section (1) may also specify the number of Trustees that each of the bodies referred to in that clause may elect.

(4) The election of Trustees under sub-clause (ii) of clause (c) of sub-section (1) shall be held within such period as may, from time to time, be specified by the Central Government.

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(5) The chief executive authority of every electing body shall communicate forthwith to the Central Government the result of any election held in pursuance of sub-section (4).

(6) The names of persons appointed or elected as Trustees shall be notified by the Central Government in the Official Gazette."

From a bare reading of the above provision, it is clear that it is not mandatory on the part of the Central Government to appoint any particular person and no statutory right conferred on any particular person for appointment as Trustee to the Board of Trustees and it is the discretion of the Central Government. Hence the above provision does not confer any right on the petitioner-Association's nominee to be appointed as one of the Trustee.

6. In view of the foregoing reasons, there is no substance in the writ petition and accordingly, the writ petition is dismissed. Consequently, W.M.P.No.17423 of 2001 is closed. No costs.

7. An alternative plea has been made by the counsel for the petitioner that the petitioner's nominee should be considered for future appointment. It is open to the respondents to consider the matter in accordance with law, if so advised.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary to Government,
   Government of India,
   Ministry of Shipping Ports Wing,
   No.1, Transport Bhavan,
   Parliament Street, New Delhi-110 001.

2. The Chairman,
   Tuticorin Port Trust, Tuticorin.

1 cc To Mr.J.Antony Jesus, Advocate, SR.43094.
1 cc To M/s.Anand, Abdul & Vinodh, Advocate, SR.42473.

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